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MEMORANDUM TO: James Jochum  
Assistant Secretary  
for Import Administration

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

DATE: December 10, 2004

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Administrative Review of Sebacic Acid from the People's Republic of  
China

Summary

We have analyzed the comments of interested parties in the 2002-2003 antidumping duty administrative review of sebacic acid from the People's Republic of China (PRC). As a result of our analysis, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Valuation of Sebacic Acid

Comment 2: Valuation of Activated Carbon

Comment 3: Valuation of Capryl Alcohol

Comment 4: Valuation of Castor Oil

Comment 5: Methodology for Calculation of Co-Product Ratio

Comment 6: Selection of Surrogate Financial Ratios

Comment 7: Correction of Clerical Errors

### Background

On August 5, 2004, the Department of Commerce (the Department) published the preliminary results in this administrative review. See Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 47409 (Aug. 6, 2004) (Preliminary Results). On August 31, 2004, we issued a Memorandum to the File from Jennifer Moats entitled "Analysis for the Post-Preliminary Calculation of Sebacic Acid from the People's Republic of China: Guangdong Chemicals Import and Export Corporation Group" to correct an error in the Preliminary Results. On September 8, 2004, SST Materials, Inc. d/b/a Genesis Chemicals, Inc. (Genesis) and Guangdong Chemicals Import and Export Corporation (Guangdong) submitted additional surrogate data.

We invited parties to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those we presented in the Preliminary Results. The period of review (POR) is July 1, 2002, through July 31, 2003.

### Margin Calculations

We calculated export price and normal value using the same methodology stated in the Preliminary Results, except as follows:

1. We revalued capryl alcohol using the data provided by Guangdong on September 8, 2004, for octanol. See Comment 3, below.

2. We revalued activated carbon using the data provided by Guangdong. See Comment 2, below.
3. We valued labor using the 2002 regression-based wage rate for the PRC in accordance with 19 CFR 351.408(c)(3). We obtained this data from the Import Administration's website at [<http://ia.ita.doc.gov/wages/02wages/02wages.html>](http://ia.ita.doc.gov/wages/02wages/02wages.html). For purposes of the Preliminary Results, we used 2001 data because more recent data was not yet available.
4. We made the necessary corrections for the clerical errors in the inland freight calculation for activated carbon and packing material expenses.

#### Discussion of the Issues

##### Comment 1: Valuation of Sebacic Acid

Guangdong argues that in the Preliminary Results, the Department used a surrogate value for sebacic acid which is aberrational because it is over six times the commercial value of the subject merchandise. Guangdong contends that the import statistics upon which the Department relied in the Preliminary Results were based upon the six-digit Indian Harmonized Tariff Schedule (HTS) item 291713, which is a basket tariff category that includes both sebacic acid, a commodity product, and azelaic acid, a specialty chemical product. Guangdong argues that the Department has recognized that import statistics based on a basket tariff category are not appropriate surrogates if a more representative alternate surrogate is available, citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from China, 69 FR 3887 (January 27, 2004), and Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the PRC, 69 FR 34130 (June 18, 2004) (Tetrahydrofurfuryl Alcohol). Guangdong contends that the Department

has stated specifically that, when alternate surrogate-value information is available, “[i]mport data from basket categories can be too broad to be reliable,” citing Freshwater Crawfish Tailmeat from China: Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999) (Crawfish), at Comment 1.

Guangdong also contends that in the past, the Department has determined certain price quotes to be superior choices as surrogate values rather than average unit value data derived from basket-category import statistics because the price quotes “better approximated the cost of the actual inputs used by the respondent,” citing Industrial Nitrocellulose from China: Final Results of Antidumping Administrative Review, 62 FR 65667 (December 15, 1997) (Nitrocellulose) at Comment 4.

Guangdong contends that, in its September 8, 2004, surrogate-value submission, it provided Indian import statistics specific to the eight-digit HTS number 291713.02 which corresponds specifically to sebacic acid. Guangdong claims that, as opposed to import statistics based upon a basket tariff provision containing both sebacic acid and azelaic acid, the import statistics specific to sebacic acid would serve as the most accurate surrogate value for sebacic acid. Guangdong asserts further that the U.S. import average unit value for sebacic acid, the benchmark prices for sebacic acid from Chemical Market Reporter, and the Chemical Weekly prices for oxalic acid, which it provided in its September 8, 2004, submission to the Department, all support Guangdong’s proposed surrogate value for sebacic acid. Additionally, Guangdong argues, the petitioner has not mentioned the price differential between the basket category average unit value and the average unit value of the tariff provision relating solely to sebacic acid and the petitioner has not challenged the accuracy of the values for commercial sebacic acid prices derived from U.S. import statistics for sebacic acid, prices for sebacic acid on the record from the Chemical Market Reporter, or Indian published prices for oxalic

acid as presented to the Department by Guangdong. Guangdong argues that all of these prices support its proposed methodology. Thus, Guangdong contends, in the final results the Department should use a surrogate value based upon the average unit value of the eight-digit Indian HTS provision specific to sebacic acid rather than the average unit value of the six-digit basket tariff provision that is inclusive of both sebacic and azelaic acids.

The petitioner, Genesis, argues that it has reviewed the Indian HTS statistics available on-line from the Indian Department of Commerce and can find no reference to the eight-digit HTS category for sebacic acid to which Guangdong refers. Genesis contends that the Chemical Weekly website page confirms that the Indian HTS statistics use a classification system that Chemical Weekly developed. Genesis contends further that the data Guangdong submitted is based on a search of the Chemical Weekly database, which only includes imports into specified ports of entry and does not encompass all imports into India. In addition, Genesis argues, a review of U.S. import data for both sebacic and azelaic acid shows that the average U.S. import prices for these two chemicals are virtually the same. Thus, Genesis contends, the lower average unit value for sebacic acid imports into the United States as compared to the average unit value for sebacic acid under HTS 291713 into India (i.e., the eight-digit Indian HTS number which corresponds exclusively to sebacic acid) may only reflect different market conditions in each country and therefore does not reflect that azelaic acid is a higher-priced specialty chemical.

Genesis contends that a review of the Chinese import statistics for sebacic acid reveals a unit value over ninety times higher than that for the two usable values submitted by Guangdong. Genesis asserts that, due to market distortions in China, the Chinese average unit values should be lower, not

ninety times higher, than average unit values from Germany. Genesis further contends that Guangdong's submission represents only two imports. Genesis argues that, as a result, Guangdong's proposal does not represent a broad range of data for which the Department has expressed a strong preference.

Genesis argues that the Department found that the average unit values of the basket category and the average unit value of the product-specific classification were comparable and the Department valued the factor using a surrogate value from a basket category, citing Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 34125 (June 18, 2004) (PRCBs), and accompanying Issues and Decision Memorandum at Comment 5. Genesis contends, that, in this case, the Department used the correct HTS category as the surrogate value for sebacic acid and Guangdong has not presented sufficient data to justify its position that the Department should change the HTS category upon which it has relied in prior reviews.

Department's Position: The antidumping statute requires that the Department use the best available information when selecting surrogate values for factors of production from a market economy in the normal-value calculation for products exported from a non-market-economy (NME) country. See section 773(c)(1) of the Tariff Act of 1930, as amended (the Act). In choosing the appropriate surrogate values, the Department considers the quality, specificity, and contemporaneity of the data. See, e.g., Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review, 69 FR 64029 (November 3, 2004) (Honey from PRC), and accompanying Issues and Decision Memorandum at Comment 4. We have considered

these factors and determined that the six-digit HTS category is the most appropriate category for the valuation of sebacic acid based upon the quality of the data.

Both the Indian import statistics and the data from Chemical Weekly are contemporaneous to the POR. While it may appear that the eight-digit HTS category developed by Chemical Weekly is more specific than the more general six-digit HTS category in the Indian import statistics, we have found that there are several reasons to question the quality of Chemical Weekly's eight-digit category. First, the eight-digit HTS category is a category developed by Chemical Weekly and is not a category in India's Harmonized Tariff Schedule. See <http://commerce.nic.in/eidb/icomq.asp> and <http://www.chemicalweekly.com/chemimpex/>. Therefore, we are unable to determine the accuracy of the further-categorized Chemical Weekly data since it was originally derived from official Indian government statistics, yet there is no explanation or support for its derivation. Second, the eight-digit HTS category provided by Guangdong contains only two imports, after removal of imports of sebacic acid from the PRC. Therefore, it does not represent a sufficiently broad range of import values on which to base the surrogate value for sebacic acid where alternative data are available.

Regarding Guangdong's comment that azelaic acid is a higher value or specialty product, the Department's review of the U.S. import prices for azelaic acid and sebacic acid shows that both values are virtually the same, with sebacic acid sometimes having the higher value. See Memorandum to the File from Jennifer Moats entitled "Comparison of Sebacic Acid and Azelaic Acid Import Values to the United States," dated December 10, 2004 (Azelaic Acid Memo). Additionally, our review of the U.S. import statistics over the January 2002 through November 2003 period showed that the prices for sebacic acid and azelaic acid varied by only \$0.30 per kilogram on average. See Azelaic Acid Memo.

We do not find that an average \$0.30 per kilogram price difference over the course of the 23-month period indicates that prices for azelaic acid are significantly different from prices for sebacic acid. The prices for azelaic acid and sebacic acid fluctuate with sebacic acid sometimes having the higher price and, therefore, we do not see a clear pattern that azelaic acid is a higher priced product.

We conducted additional internet research and found no technical or marketing information which indicated that azelaic acid is a specialty product in comparison to sebacic acid. Further, Guangdong has not provided any evidence to demonstrate that azelaic acid is a specialty product. The only information it provided is the comparison of the Indian import prices for sebacic acid and azelaic acid prices from Chemical Weekly. Because Guangdong has not provided any factual evidence which indicates that azelaic acid is a specialty chemical rather than a commodity and our analysis of U.S. imports of azelaic acid and sebacic acid does not indicate a significant price differential as suggested by Guangdong. We do not agree that azelaic acid is a specialty item which is not comparable to sebacic acid. We find that the sebacic acid surrogate value we used in the preliminary results of review is the best available information and we have relied on this value in our final results of review.

Guangdong contends that the Department has recognized that import statistics based on a basket tariff category are not appropriate surrogates if a more representative alternate surrogate is available. In this case, however, we do not find the six-digit HTS category to be unreliable. Although the six-digit Indian statistics represent a basket category that includes both sebacic acid and azelaic acid, our independent research suggests that the azelaic acid values are not consistently higher than the value for sebacic acid. See Azelaic Acid Memo. On the other hand, the categorization of the import data for sebacic acid and azelaic acid was developed by Chemical Weekly and we cannot determine



how this categorization was derived from the official Indian government statistics. Therefore, we find that it is more reliable to use the information from the official Indian government statistics because these statistics are the primary source upon which the Chemical Weekly statistics are derived. The Indian import statistics are publicly available statistics provided from a government source. Furthermore, we find that the six-digit HTS number best approximates the cost of sebacic acid because the narrower category proposed by Guangdong contains only two usable data points, whereas the official Indian government statistics are more representative because they are based on more data points. Therefore, we have valued sebacic acid using the official Indian government statistics basket category, as we did in the preliminary results.

Comment 2: Valuation of Activated Carbon

Guangdong claims that, in the Preliminary Results, the Department used a surrogate value for activated carbon based upon the average unit value of Indian HTS number 380210.00. Guangdong contends that this surrogate value should not be used in the final results because the Indian import statistics cover all grades of activated carbon and do not reflect the price in India of the low-grade activated carbon (grade NDC-80GX) which the Chinese producers use to produce the subject merchandise. Guangdong states that, in its September 8, 2004, surrogate-value submission, it provided an August 2002 price quote for grade NDC-80GX activated carbon, a low grade of activated carbon and the type of activated carbon that was actually used in the production of the subject merchandise. Guangdong claims the price quote is specific to this POR. Guangdong also argues that the Department used this same price quote as the surrogate value for activated carbon in the final results of the previous

administrative review, citing Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Review and Determination To Revoke Order in Part, 67 FR 69719 (November 19, 2002) (Sebacic Acid 2002), and accompanying Issues and Decision Memorandum at Comment 2.

Guangdong contends that, when assessing which particular surrogate represents the best available information, the Department prefers a surrogate value that is comparable in terms of design or materials to the actual input consumed by the respondents in the production of the subject merchandise, particularly where those characteristics have a significant impact on price, citing Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19030 (April 30, 1996) (Bicycles from China), at Comment 6. Guangdong claims that it is the Department's long-standing practice to use prices of surrogates that are most comparable to the raw material inputs actually used to produce the subject merchandise, in terms of the substantive physical characteristics, citing Manganese Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001) (Manganese Metal), and the accompanying Issues and Decision Memorandum at Comment 2. Guangdong claims further that it has been the Department's longstanding practice to seek prices of surrogates that reflect most closely the specific grade and physical characteristics of the input used by the NME producer, citing Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Administrative Review, 61 FR 41994, 41996-7 (August 13, 1996) (Helical Spring Lock Washers), at Comment 2.

Additionally, Guangdong argues that, with respect to activated carbon in particular, it is the Department's longstanding practice not to use overly broad import statistics as surrogate values, *i.e.*,

import statistics that include types of activated carbon not used in the production of the subject merchandise. Rather, Guangdong contends, it is the Department's practice to use a surrogate value based upon a price quote of activated carbon that is closest to the type of activated carbon that is used in the production of the subject merchandise, citing Sebacic Acid 2002.

Guangdong states that, in previous reviews, the Department has declined to use Indian import statistics in valuing activated carbon, finding that public price quotes obtained from Indian companies were more appropriate to value the low-grade, black powder-activated carbon that was actually used to produce sebacic acid by the respondent manufacturers, citing Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503 (December 13, 1999) (Sebacic Acid 1999), at Comment 6. Guangdong argues that, in the most recently completed review of this order, the Department determined again that price quotes from India were the most reliable source of a surrogate value for the low-grade, black powder-activated carbon used by the respondent Chinese sebacic acid producers because, it asserts, the Department found that the price quote specifies the same type of activated carbon used in the production of subject merchandise during the POR, citing Sebacic Acid 2002 at Comment 2.

Guangdong argues that, in more recent cases, the Department has followed its longstanding practice and rejected the use of Indian import statistics to value activated carbon and instead relied upon product-specific price quotes as surrogates to value reported activated carbon inputs, citing Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Television Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) (Television Receivers), and accompanying Issues and Decision Memorandum at

Comment 2 and Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) (Polyvinyl Alcohol), and accompanying Issues and Decision Memorandum at Comment 5. Guangdong contends that, for the final results, the Department should use the price quote Guangdong submitted for the specific grade of activated carbon used in the production of the subject merchandise.

Guangdong contends that, although Genesis argues that the Department should use the average unit value of Indian import statistics for activated carbon because the price quote is an export price and not an Indian domestic price, Genesis's argument has no merit because it assumes incorrectly that the price quote was an export price. Guangdong contends that Genesis's assumption is based on the fact that the name of the company that provided the quote was "Ishaan Exports" and that the stated Rupee price was converted into U.S. dollars. Guangdong claims that the fact that an Indian company's name includes the words "exports" does not preclude the company from engaging in domestic sales. Additionally, Guangdong contends, the quotation was quoted in Indian rupees, indicating that it was a domestic sale, not an export price. Guangdong claims that the parenthetical dollar-value is merely an estimated dollar-value benchmark.

Guangdong concludes that, because the Department used the same price quote in the preceding administrative review, Genesis has presented no compelling reason for the Department to abandon its stated preference for using product-specific price quotes for activated carbon. Therefore, Guangdong contends, the Department should use the domestic Indian price quote for the type of activated carbon (grade NDC-80GX) which its supplier actually used in manufacturing the subject merchandise.

Genesis argues that the price quote Guangdong provided is an export price, not a price charged on the domestic market. Genesis claims that the Department's recent practice is to reject export prices from India as distorted due to a presumption of broadly available subsidies, citing Final Determination of the Antidumping Duty Investigation of Certain Ball Bearings and Parts Thereof from the People's Republic of China, 68 FR 10685 (March 6, 2003) (Ball Bearings). Genesis states that Guangdong has presented no evidence to rebut this presumption and, as such, the Department must reject the export price Guangdong submitted.

Additionally, Genesis argues that the Department has rejected price quotes, even if more specific to the product being valued, in favor of unit values in the Indian import statistics. Genesis claims that, in PRCBs, where the Department was valuing black and color ink, the Department continued to rely on unit values from Indian import statistics, even though the pricing data from Hindustan was more specific to black and color ink, citing PRCBs at Comment 5. Genesis claims that the Department rejected the specific price quotes because the data was not contemporaneous to the period of investigation, represented the experience of a single producer, was "self-selected," and had little or no supporting documentation. Genesis asserts that, while the price quote Guangdong provided is contemporaneous with the POR, it is deficient compared to the import average unit value because it represents a single proposal for a self-selected transaction.

Department's Position: We have determined that it is appropriate to value the activated carbon which Guangdong's supplier used in the production of sebacic acid with the low-grade activated-carbon price

quote which Guangdong submitted because this price quote reflects the specific type and grade of activated carbon Guangdong's supplier used in its production of sebacic acid.

In selecting surrogate values, the Department selects the "best available information" and does so based on the quality, specificity, and contemporaneity of the data. See section 773(c)(1) of the Act and Honey from PRC at Comment 4. In addition, normally the Department will use publicly available information to value factors. See 19 CFR 351.408(c)(1). Further, the Department's general practice is to value factors using prices that reflect the specific grade and physical characteristics of the input used by the NME producer. See Manganese Metal at Comment 2 and Helical Spring Lock Washers at Comment 2. Although both the Indian import statistics and the price quote are contemporaneous with the POR, we have determined that the price quote is more specific to the type of activated carbon used by the Chinese producer in the production of subject merchandise.

Consistent with its practice, the Department has declined to use prices in the Indian import statistics for valuing activated carbon. See, e.g., Sulfanilic Acid at Comment 3 and Polyvinyl Alcohol at Comment 5. The public price quotes are based upon a lower grade of activated carbon, similar to what the Chinese producer used in the production of sebacic acid. Additionally, we used this same price quote as the surrogate value for activated carbon in the final results of the last administrative review and determined there that price quotes from India were the most reliable source of surrogate valuation of the low-grade, black powder-activated carbon which the respondent Chinese producers of sebacic acid used. See Sebacic Acid 2002. Based on our past practice and because the low-grade activated-carbon price quote is most representative of the type of activated carbon the producer used

in the production of sebacic acid, for these final results of review, we have used the price quote to value the low-grade activated-carbon factor.

Regarding the petitioner's argument that this price quote represents an export price, we agree with Guangdong that the price quote cannot be determined to be an export price simply because the company issuing the price quote is a company which also exports. Evidence on the record suggests that the Indian price at issue is not an export price. The price was quoted in rupees and not dollars. Genesis provides no support for its speculation that the price quote originated in dollars and is, therefore, an export price. Therefore, we find that the price is a domestic sales price.

Considering that the price quote is more specific to the actual type and grade of activated carbon which Guangdong's supplier used in the production of sebacic acid, we find that, for this input, the use of a value in the more general Indian import statistics is inappropriate. We also find the data to be contemporaneous with the POR. Additionally, we have relied on this type of price quote in several preceding reviews of this antidumping duty order. See Sebacic Acid 1999 at Comment 6 and Sebacic Acid 2002 at Comment 2. Therefore, based on the record of this review, we find that the more specific pricing data represents the best information available to value the actual type and grade of activated carbon which Guangdong's supplier used in the production of sebacic acid and have valued activated carbon using this price quote for the final results of this administrative review. In any subsequent reviews of this order, we will attempt to value this factor using publicly available information.

Comment 3: Valuation of Capryl Alcohol

Guangdong claims that, in the original dumping investigation, the Department determined that Indian prices for octanol, a product with a similar molecular structure as that of capryl alcohol, may be used as a surrogate value for capryl alcohol, citing Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994) (Sebacic Acid Investigation), at Comment 8. Guangdong contends that the Department has relied upon published prices of octanol in Chemical Weekly to value capryl alcohol produced in the production process of sebacic acid in all reviews since the investigation. Guangdong contends that, although the Department relied on prices from official Indian import statistics to value capryl alcohol in the preliminary results of review, it urges the Department to use the period-specific Chemical Weekly pricing data for octanol in its September 8, 2004, surrogate-value submission.

Guangdong argues that Genesis's argument to value caproyl alcohol rather than capryl alcohol is based upon a typographical error in its November 4, 2003, submission.

Genesis argues that Guangdong claimed in its November 4, 2003, response that capryl alcohol is a by-product and that further refinement of capryl alcohol results in caproyl alcohol as a co-product. Genesis argues further that this is inconsistent with the statement by Guangdong in its March 10, 2004, response that "there is no refining process for capryl alcohol." Genesis asserts that, given these discrepancies in Guangdong's responses, the Department should use the value which is most closely associated with caproyl alcohol. Genesis contends that the surrogate value the Department used in the investigation for 2-ethylhexanol is more appropriate in this regard than the octanol surrogate value which Guangdong has proposed. Therefore, Genesis argues, the Department should continue to rely on the value for capryl alcohol in Indian import statistics.



Department's Position: Consistent with our prior decisions in the proceeding, we have determined that it is appropriate to value capryl alcohol using price quotes for octanol in Chemical Weekly.<sup>1</sup> We find that Guangdong referred to capryl alcohol inadvertently as a by-product instead of a co-product in its original response to the Department. Guangdong corrected this statement subsequently, indicating that capryl alcohol is the appropriate co-product. See Guangdong's March 10, 2004, supplemental response at page 7. Because capryl alcohol has to be refined further to become caproyl alcohol, we find that the co-product produced in the production of sebacic acid is capryl alcohol. As the Department has found in previous reviews of this order, capryl alcohol and octanol are the same substance (See Sebacic Acid 2002). Therefore, we continue to find the octanol value to be an appropriate surrogate for the co-product, capryl alcohol. Consistent with previous administrative reviews and absent any record evidence to the contrary, we have determined that the value for octanol is the most appropriate value on the record with which to value capryl alcohol. See Sebacic Acid Investigation. Thus, for these final results of review, we have used the domestic prices for octanol as published in Chemical Weekly.

Comment 4: Valuation of Castor Oil

Genesis comments that 19 CFR 351.408(c)(1) states that, where a factor is purchased from a market economy supplier and paid for in a market-economy currency, normally the Department will use

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<sup>1</sup>See Sebacic Acid From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review, 65 FR 1849 (January 12, 2000); Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69506 (December 13, 1999) at Comment 8; Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 63 FR 43373, 43375 (August 13, 1998); Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) at Comment 2; Sebacic Acid Investigation at Comment 8.

the price paid to the market-economy supplier. Genesis states that the Federal Circuit has held that accuracy, fairness, and predictability are enhanced by using the prices that the Department can determine reflect an NME producer's market determined input price, citing Lasko Metal Prods., Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (Lasko).

Genesis contends that Guangdong reported the actual market-economy price its supplier paid for castor oil it imported from India on an FOB India basis. Citing the July 30, 2004, Memorandum to the File from Greg Kalbaugh entitled "Preliminary Valuation of Factors of Production" (FOP Memo) at 3, Genesis states that the Department rejected the use of this market-economy input because "India has been found to have broadly available export subsidies and the Department has therefore found Indian export prices to be unreliable." Genesis contends that there are numerous reasons why the Department should follow its normal practice and use the market-economy price for purchases from India as Guangdong reported its supplier paid to value the castor-oil input.

Genesis states that a decision to reject the market-economy price because of a prior decision that India has broadly available export subsidies, without regard to the distinguishing facts of this case and the distortions that would result from such subsidies, would prejudice Genesis severely. Genesis argues that the Department has demonstrated that the presumption of subsidy-based market distortion can be rebutted based on the availability of factual information indicating the absence of subsidies. Genesis contends that, while the Department has not made an explicit factual determination that export prices of castor oil from India are not subsidized, factual information on the record of this review indicates that the Indian market-economy export prices cannot be distorted due to subsidies because of the relative import prices. As a result, Genesis argues, the Department should use the market-economy

price of castor oil from India. Further, Genesis states that, because Guangdong's supplier purchases castor oil from India on an FOB India basis, the Department must adjust the unit cost of this factor for expenses associated with brokerage and handling, ocean freight to China, marine insurance, and inland freight in China to the supplier's factory.

Citing the Department's FOP Memo at 3, Guangdong contends that the Department provided a clear factual and legal basis why it did not use the market-economy price by concluding that Indian export prices to China are distorted by broadly available export subsidies and do not constitute an accurate surrogate value. Guangdong argues that the Department's determination in this case is consistent with its longstanding practice of refusing to use distorted export prices from countries which provide broadly available export subsidies, citing Final Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshield from the People's Republic of China, 67 FR 6482 (February 12, 2002) (ARG), and accompanying Issues and Decision Memorandum at Comments 1-5, and Ball Bearings. Guangdong states that, in the case of India, the Department has concluded that programs include the Duty Entitlement Passbook Scheme, the Advance License Scheme, the Export Promotion Capital Good Scheme, Pre-Shipment and Post-Shipment Export Financing, Exemption of Export Credit from Interest Taxes, and section 80HHC of India's Income Tax Act, which have provided average export subsidies in excess of 20 percent ad valorem. It cites Ball Bearings at Comment 8 to support its assertion. Guangdong contends that export prices from countries with broadly available subsidies are distorted regardless of whether they are higher or lower than an alternate surrogate value. Therefore, Guangdong argues, the Department is correct to reject distorted and unreliable export prices.

Guangdong argues that Genesis has not put any information in the administrative record to establish that exports of castor oil from India are not subsidized by the Government of India.

Guangdong acknowledges that, in a previous administrative review of this proceeding, the Department used the Chinese producers' purchase price of Indian castor oil in its calculation of normal value, citing Sebacic Acid 1999, but asserts that, in 2002, the Department adopted its current administrative practice of rejecting a supplier's market purchases to value inputs if such purchases were from countries with broadly available export subsidies, citing ARG at Comments 1-5. Consequently, it argues, the reasoning behind the Department's previous determination in this case does not reflect the current administrative practice adopted by the Department. Guangdong states that the Department should continue to reject Indian export prices for castor oil because the Department concluded correctly that Indian export prices are distorted by the receipt of generally available export subsidies.

Department's Position: The Department has determined that the Indian export prices are unreliable due to broadly available export subsidies.<sup>2</sup> Therefore, we have valued inputs of castor oil using published domestic prices from the Indian newspaper The Economic Times rather than the market-economy prices of Indian castor oil which Guangdong reported its supplier purchased and used.

Although we used Indian export prices in an earlier review of this order (Sebacic Acid 1999), our evaluation of the accuracy of such prices has changed. We have disregarded Indian export prices here and in other proceedings because we determined that they may benefit from export subsidies. See

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<sup>2</sup>See Sebacic Acid from the PRC: Notice of Initiation of Changed Circumstances Review, 69 FR 39906 (July 1, 2004) (Sebacic Acid CCR); Cased Pencils from the PRC: Final Results and Partial Rescission of Antidumping Duty Review, 68 FR 43082 (July 21, 2003) (Cased Pencils).

Sebacic Acid CCR, 69 FR at 39907, and Cased Pencils, 68 FR at 43083. Consistent with our practice, we do not use export prices from a market economy for the valuation of surrogate values when we have a reasonable basis to believe or suspect that the country benefits from broadly available export subsidies. Id. As such, we do not use market-economy prices from India unless a party can rebut the general presumption that Indian prices are subsidized. Genesis's claim in this case does not amount to a rebuttal of that presumption or inference. Genesis has not provided specific information which demonstrates that exports of castor oil from India are not subsidized. We cannot determine that market-economy input prices are market-determined based only on a comparison of Indian import and export prices. Indian export prices could be higher or lower relative to Indian import statistics for various reasons including market fluctuations. A comparison of import and export prices in and of itself does not indicate whether Indian exports are subsidized. To rebut the presumption, there must be factual record evidence which shows that the market-economy prices are not distorted.

Citing Lasko, Genesis states that the Federal Circuit has held that, where we can determine that an NME producer's input prices are market-determined, accuracy, fairness, and predictability are enhanced by using those prices. In this case, Genesis has not rebutted our general presumption with any factual information which suggests that exports of castor oil from India are not subject to broadly available export subsidies. Absent any such information, we cannot regard such prices as accurate. Thus, we have not used the market-economy prices Guangdong reported its supplier paid for Indian castor oil, consistent with ARG. Instead we have relied on a surrogate value we found in the Economic Times.

Comment 5: Methodology for Calculation of Co-Product Ratio

Genesis argues that, for the purposes of the co-product allocation (sebacic acid and capryl alcohol), the Department must take into account the reported factors for the prime product and co-product because the co-product allocation should be based on the revenues generated for sebacic acid and the co-product. It contends that such revenue is not just a function of the surrogate values but also of the quantities of each produced in the production process. Genesis argues that the Department should use the co-product ratio only to reduce the usage rates for castor oil, zinc oxide, glycerine, phenol, cresol, and caustic soda. It refers to Guangdong's November 4, 2003, response at D-3 to substantiate the inputs used in the production of sebacic acid prior to the creation of capryl alcohol.

Guangdong responds that, for purposes of accuracy, reliability, and consistency in different administrative reviews in the proceeding, the co-product allocations should be made on the basis of the relative weight of the products produced as a result of the production process. Guangdong asserts that the Department used this allocation in the original investigation, citing Sebacic Acid Investigation. Guangdong contends that the Department switched to a value-based allocation in the first administrative review, finding that allocating costs solely on production volume ignores the different revenue-producing powers of joint products citing Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR at 10539 (March 7, 1997). Guangdong argues that, because this is an NME proceeding, value-based allocations are prone to inaccuracies and are inherently inconsistent. It asserts that the Department has recognized that a value-based allocation is appropriate in the context of an NME antidumping proceeding in only very limited instances, citing Polyvinyl Alcohol from China at Comment 3.

Guangdong argues that inaccuracies based on value-based allocations are particularly evident here. It contends that the preliminary results of this case is a prime example of how a value-based allocation can distort the margin analysis in an NME case. Guangdong asserts that, because the Department used distorted surrogate values for both sebacic acid and capryl alcohol in the Preliminary Results, the resulting allocation was skewed to over 96 percent to sebacic acid and less than four percent to capryl alcohol. Guangdong argues that this allocation does not reflect the relative commercial values of the two products and is markedly different from the Department's value-based allocations in the previous reviews. Guangdong argues that the use of value-based allocation leaves it with no basis of knowing how its allocation ratios would change in each segment of the proceeding.

Guangdong contends that allocations based upon the weight of products produced is more stable and predictable and is related directly to its supplier's production of the subject merchandise. Guangdong asserts that the relative weights of merchandise are based upon quantifiable amounts taken directly from the company's production records and, therefore, are subject to analysis and verification. Guangdong asserts that Department should base allocations between sebacic acid and capryl alcohol on the percentage of capryl alcohol produced per ton of sebacic acid produced. Guangdong argues that, to the extent that the Department continues to use a value-based allocation between the co-products premised upon Indian surrogate values, the Department must revise its surrogate values for sebacic acid and octanol, to derive a value free of distortions and based upon commercial reality.

Department's Position: In calculating the co-product ratio for capryl alcohol, previously the Department has applied a value to sebacic acid and capryl alcohol, multiplied these values by the yield

of the respective products to obtain a net value, and then calculated an allocation factor by dividing one by the net value of sebacic acid over the net value of capryl alcohol. Therefore, the co-product ratio is not based solely on the most appropriate surrogate values for sebacic acid and capryl alcohol.

The co-product ratio methodology we used for the preliminary results reflects the relative yields of these products. This is consistent with past practice in this case and is consistent with general cost accounting. See Sebacic Acid 1999 and Sebacic Acid 2002. It would be inappropriate to create a co-product ratio based on the relative weights of the products as such an approach does not reflect normal accounting practices and does not take into consideration the relative values of the products. In Polyvinyl Alcohol from China at Comment 3, we stated that, because of the significantly different revenue-producing powers of the two products, we found a value-based allocation methodology produced a more reasonable and accurate reflection of the costs in that case.

In our analysis of the relative values for sebacic acid and capryl alcohol in this review, we find that the significantly different revenue-producing powers of these two products makes a value-based allocation a more accurate reflection of the costs in this case as well. An accurate reflection of cost is based on not only the value of the two co-products produced, but on the relative yields of those products, thereby reflecting relative revenues. Because our preliminary co-product ratio calculation accounts for the relative yields of the products, we consider the relative quantities produced as the petitioner requests. See the December 10, 2004, Memorandum to the File from Jennifer Moats entitled "Final Valuation of Factors of Production." Thus, we have not changed the product-ratio calculation we used for the preliminary results of this administrative review and have based the co-



product allocation methodology on the surrogate values and relative yields of sebacic acid and capryl alcohol for the final results of review.

Comment 6: Selection of Surrogate Financial Ratios

Guangdong states that, in its September 8, 2004, surrogate-value submission at Attachment 4, it provided the financial data of Punjab Chemicals & Pharmaceuticals, Ltd. (Punjab) to permit the calculation of surrogate overhead, selling, general, and administrative (SG&A) expenses, and profit ratios specific to a company that produced a product comparable to the subject merchandise. It asserts that it also provided information from the company's website and from a Dunn and Bradstreet report which establishes that Punjab was a significant producer of ozalic acid, a product the Department has determined to be similar to sebacic acid. Guangdong argues that the Punjab financial data reported separate figures for raw material costs, labor costs, interest, depreciation, and profit before taxes, but the available financial data combined energy, overhead, and SG&A expenses into the category "other expenditure." To calculate the necessary financial ratios, Guangdong asserts, it allocated the amounts contained in "other expenditure" to energy, overhead ratio, and SG&A expenses as a conservative recommendation.

Citing 19 CFR 351.408(c)(4), Guangdong argues that the Department should use the surrogate financial ratios calculated from the Punjab data. Guangdong claims that it has accounted for all reported production costs and has not omitted any production costs from its calculations. Guangdong also asserts that its allocation was conservative given that sebacic acid is a chemical product with a capital-intensive and energy-intensive production process. Guangdong contends that, if it wanted to

skew the financial results in its favor, it would have allocated a majority of other expenditures to energy expenses in order to increase the denominators of the overhead, SG&A, and profit ratios, and it would have allocated less to overhead and SG&A expenses, thereby reducing the numerators of the financial ratios. Guangdong states that it is the Department's practice to derive the overhead, SG&A, and profit ratios from producers of merchandise that is identical or comparable to the subject merchandise, citing Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from China, 64 FR 71104 (December 20, 1999) (Creatine Monohydrate), at Comment 1. Guangdong argues that in Glycine from China: Final Results of New Shipper Review, 66 FR 8383 (January 31, 2001) (Glycine) at Comment 7, the Department selected financial data from an Indian company that produced phenylglycine, a product the Department determined was similar to glycine, over generalized Reserve Bank of India (RBI) data that covered a large number of Indian companies engaged in various industrial, agricultural, and commercial sectors of the Indian economy and was not specific to the Indian glycine industry. Guangdong states that, given that public data from an Indian producer of oxalic acid, a product determined by the Department to be similar to sebacic acid, is now on the record, the Department should use producer-specific data that pertains directly to the subject merchandise. Guangdong argues that continued reliance on the generalized RBI data is no longer justified, citing Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339, 1346 (2004) (Shanghai Foreign Trade).

Genesis argues that the level of line-item cost detail upon which the Department relies normally to calculate accurate financial ratios is absent in the Punjab Guangdong has submitted. It claims that Guangdong provided cost data only for raw materials, staff costs, interest, depreciation, and other

expenditures and, therefore, the Department must reject the Punjab Data. Genesis argues that recently the Department rejected the use of financial data from an Indian producer to calculate ratios when the requisite level of cost detail was not available in the financial statement, citing PRCBs and the accompanying Issues and Decision Memorandum at Comment 2. Genesis contends that “managerial remuneration” is an SG&A component but may well be a component of Staff Costs in the Punjab income statement Guangdong submitted and the Department attached to its memo entitled “Preliminary Valuation of Factors of Production,” dated July 30, 2004, at Attachment 8.

Additionally, Genesis asserts, “Other” costs in the Punjab income statement would include both power and fuel as well as a plethora of other SG&A and overhead costs. Genesis asserts that Guangdong’s allocation of “other expenditure” to energy, overhead, and SG&A is arbitrary. It contends, therefore, that, regardless of the fact that Punjab may produce a product comparable to sebacic acid, the non-specificity of the cost elements in the Punjab Data make these financials unusable for purposes of calculating reliable financial ratios.

Department’s Position: We have determined that the financial statements Guangdong provided do not contain the necessary detail we require to calculate accurate financial ratios. The cost data in the financials Guangdong submitted provide line items only for raw materials, staff costs, interest, depreciation, and other expenditures. Because of the lack of line-item detail in the financials, we are not certain we are capturing all the necessary costs or, on the other hand, double-counting certain costs we have captured elsewhere in the margin calculation. For example, “managerial remuneration,” a component of SG&A, may be a component of Staff Costs in the income statement for Punjab Data.

Additionally, other line items on the financial statements have general headings which Guangdong did not explain and for which the Department cannot otherwise determine the costs which were captured in specific line items. For example, we cannot determine what expenses are included in “Other.”

Although Punjab may produce a product comparable to sebacic acid, the non-specificity of the Punjab cost elements make these financials unusable for purposes of calculating reliable financial ratios. Although the Department prefers to use financials from a producer of a product similar to the subject merchandise when calculating the financial ratios for overhead, SG&A, and profit as stated in Creatine Monohydrate, Glycine, and Shanghai Foreign Trade, because the Punjab financials do not contain the necessary line-item detail to be useable for an accurate financial ratio calculation, these cases are inapposite. The RBI data provides the line-item detail necessary for the calculation of accurate financial ratios without the Department trying to make assumptions as to what may or may not be included in certain line-items. Therefore, as in PRCBs, we have rejected the Punjab-based financial ratios and have relied on the RBI data in the final results of review.

Comment 7: Correction of Clerical Errors

Guangdong asserts that, notwithstanding the Department’s post-preliminary results correction of the calculation of the dumping margin, the Department has additional clerical errors which the Department should correct in the final results of review. Guangdong states that, in the calculation of inland-freight expenses attributable to the transport of activated carbon from the vendor to the factory, the Department misplaced the decimal point by two positions, thereby overstating the applicable freight expense by a factor of 100. Also, it claims, the Department added all four packing material costs to

derive a total per-ton packing cost, assuming erroneously that each sale incorporated all four types of packaging; in reality, it contends, each sale has incorporated only one type of packaging as specified in the sale. Guangdong suggests that, to correct this error, the Department should calculate a packing cost based on the weighted-average cost for the four types of packaging.

Genesis contends that the Department's regulations prohibit the correction of the misplaced decimal point in the activated-carbon freight expense and the overstated packing calculations at this late stage in the review. Genesis asserts that, following disclosure of the Department's preliminary calculations, it recognized that there was an error in the calculation of the preliminary dumping margin for Guangdong. Genesis claims that 19 CFR 351.224 permits parties to a proceeding to file comments with regard to significant ministerial errors in preliminary determinations. Additionally, it contends, section 351.224(e)(2) of the Department's regulations states clearly that "(a) party to the proceeding must file comments concerning ministerial errors with five (5) days... (from) (t)he date on which the Secretary released the disclosure documents to that party...". Genesis contends that, in light of the foregoing regulation, it submitted comments identifying the error on August 6, 2004. Genesis states that, likewise, any ministerial errors with regard to the factor values for activated-carbon freight expenses and packing material costs should have been raised within five days of the Secretary's release of the disclosure documents. Genesis argues that the Department's regulations at section 351.224 (c)(2) prohibit the correction of alleged clerical errors for factor values for activated carbon freight expenses and packing material costs at this late juncture in the review.

Department's Position: For the reasons discussed below, we have corrected the errors Guangdong has alleged we made in the preliminary and post-preliminary margin calculations.

The Department has defined a “ministerial error” as any error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of conventional error. See 19 CFR 351.224(f). According to 19 CFR 351.224(c)(1), parties may include comments concerning ministerial errors made in the preliminary results in the party's case brief. Accordingly, for administrative reviews, ministerial-error allegations are not limited to the five-day period following release of the disclosure documents as discussed in section 353.224(c)(2). Thus, in this administrative review, Guangdong's allegation of the error was timely.

In an investigation, where a respondent will be subject to a cash deposit equal to that of the weighted-average margin we publish in the preliminary determination, there is a need for the parties to make ministerial errors quickly in order that the companies involved are subject to the appropriate cash-deposit rate. In an administrative review, where notification to U.S. Customs and Border Protection of any changes in the cash deposit due at the time of entry does not happen until the publication of the final results, it is not necessary to make the changes until the final results of review.

Moreover, the Federal Circuit has found the Department has an affirmative obligation to correct obvious clerical errors without regard to regulatory deadlines (or time limits for receipt of new factual information). See NTN Bearing Corporation v. the United States, 74 F.3d 1204 (Fed. Cir. 1995). Therefore, we agree with Guangdong that the misplaced decimal in the calculation of the inland-freight expenses attributable to the transport of activated carbon is a clerical error. Also, the petitioner has not

argued that these are not errors. Accordingly, in this case, we find that it is appropriate to correct the error in our calculations.

With respect to Guangdong's ministerial-error allegation regarding the packing material cost, we find that we overstated the packing costs in the preliminary and post-preliminary calculations by applying all packing costs to all sales. Because we are able to apply the individual packing costs for each sale, we find that it is more accurate to calculate a sale-specific packing cost rather than using a weighted-average cost reflecting all the packing materials and applying this average across all sales as Guangdong suggested. Whenever possible, we prefer to be specific as possible on a per-sale basis and in this case we have the ability to do so. Accordingly, in this case, we find that it is appropriate to correct the ministerial error in our calculations.

## RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margin for Guangdong in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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James Jochum  
Assistant Secretary  
for Import Administration

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(Date)